

BEFORE THE

MAY 21 1993

Federal Communications Commission
 WASHINGTON, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)

)
 Amendment of Section 73.202(b)
 Table of Allotments, FM
 Broadcast Stations,
 Wickenburg, Arizona)

MM Docket No. 93-71

To: The Commission

**COMMENTS FILED BY THE
VULTURE PEAK RESTORATION GROUP**

COMES NOW the Vulture Peak Restoration Group ("Vulture Peak Group") and hereby comments in the above-captioned proceeding. The purpose of these comments is to oppose the requested reallocation which would substitute proposed Channel 231C3 for the present Channel 229A at Wickenburg, Arizona, unless the reallocation is conditioned upon removing the existing tower for Station KTIM(AM) and relocating any proposed tower to a new location at or beyond an 11.6 mile radius of Wickenburg. In support, the Vulture Peak Group states:

STANDING

The Vulture Peak Restoration Group is an ad hoc organization of local Wickenburg citizens and homeowners in whose vicinity the present 499 foot tower of Station KTIM(AM) owned by Petitioner (Circle S Broadcasting Company,

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hereinafter "Petitioner") is located. The Vulture Peak Group is comprised of representatives of, inter alia, the following organizations: Rancho de los Caballeros, Flying "E" Guest Ranch, KL Bar Guest Ranch, Caballeros Homeowners Association, Country Club Acres, C-4 Community Homes, and individual homeowners in the surrounding countryside. The Group (which represents at least 400-500 people) was formed in protest to the environmental degradation caused by Petitioner, who constructed a 499 ft. tower in an area totally unsuited for such a structure, at considerable cost to environmental and aesthetic values, without input or coordination with the local citizenry, with detrimental economic impact upon members of the Group, and who now proposes an allocation which would apparently require the construction of a new 841 ft. tower at a different site. Due to the economic and aesthetic impact upon members of the Group of both the existing and proposed towers, it and its members have been and continue to be adversely affected and, thus, are parties in interest. The Vulture Peak Group urges that the proposed allocation should not be approved unless the existing KTIM 499 ft. tower is dismantled as a condition to the allocation. The Group believes, inter alia, that the 499 ft. tower should not have been authorized without an Environmental Assessment, under Sections 1.1301-1.1317 of the Commission's rules.

BACKGROUND

In 1990, Petitioner became the licensee of Station KTIM, Wickenburg, Arizona. Assertedly because of a lease dispute with its landlord, Petitioner (in October, 1991) sought authority to construct a 499 ft. tower at a new transmitter site southwest of Wickenburg. It also (at approximately the same time) sought authorization to construct a new FM facility at Wickenburg (BPH-911218MA), placing the FM antenna on the 499 ft. AM tower. In its construction permit application for the new AM tower (BP-911023AC), Petitioner asserted that no environmental impact assessment was required because the site was not part of a wildlife refuge, was not located in an historic site or flood plain and would not employ high intensity strobe lighting (Application, p. 10). Petitioner failed to note, however, that the tower is located within thousands of acres of pristine Bureau of Land Management and State of Arizona controlled land, which is void of commercial, industrial, business and housing development. Cattle grazing and a few mining trails and minor excavations only now exist. Nor did it note that the tower would violate the natural desert beauty of historic Vulture Peak, singularly the most prominent landmark in central Arizona. The 499 ft. tower is completely out of character with its surroundings and is a source of serious community resentment. Moreover, contrary to Petitioner's representations, the present tower does, indeed, utilize strobe lights which the Group believes meets

the definition of "high intensity." These lights flash intermittently and sporadically (though continuously) at various levels on the tower. Similarly, there is doubt as to the accuracy of the Petitioner's representations that the tower does not involve an "historic site." To the contrary, when the Board of Supervisors, Maricopa County, granted a permit for the tower, it did so under the specific condition that an archeological survey of the site be conducted by a qualified archeologist and a report summarizing the findings "be submitted to the State Historic Preservation Officer" and the State Historic Preservation Officer must confirm that the report had been received. This condition strongly suggests that the area is, indeed, an historic site.

In sum, the entire Vulture Peak/Twin Peaks area has been significantly degraded by the construction of the tower. Had the Vulture Peak Group members been aware of the proposal to erect a 499 ft. tower at that site, we would have demanded that the FCC perform an Environmental Assessment under its rules. The reason is that whether or not the proposed site falls within actions categorically excluded under Section 1.306, nevertheless, the tower has a significant environmental effect on the area and thus should have required the Mass Media Bureau to itself institute an Environmental Assessment. Our members were not aware of this matter, however, because to our knowledge the site was

never adequately posted for pending construction,^{1/} nor were any local hearings held in Wickenburg, nor were we aware that any such proposed construction was being contemplated.

THE PRESENT PROCEEDING

Petitioner now wishes to obtain a Class C (25 kw) allocation at Wickenburg so that it may move its present 6 kw station (KFMA(FM)) approximately 11.6 miles southwest of Wickenburg. There are a number of very serious problems with this proposal, as follows:

a. The Commission's Notice of Proposed Rulemaking noted that in order for an FM station on Channel 231C3 to place the required signal over Wickenburg, it will be ~~necessary to erect a tower of at least 841 ft mho proposed~~

which the signal would clear obstructions and comply with Section 73.315 (requiring 70 dBu over the principal community). But there are serious terrain obstructions between the proposed tower site and Wickenburg (i.e., Twin Peaks/Vulture Peak land mass), such that the requisite signal strength is not possible without a huge tower. The Commission has requested evidence of FAA clearance for such a tower. The Group respectfully submits that before any allocation can be made, Petitioner must also undertake an Environmental Assessment showing that a tower of such height would be environmentally defensible. Unless the environmental aspects of the proposal are in accord with the Commission's responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4335), the requested allocation should be denied.

b. The NPRM has noted the potential FAA problem presented. The details of the proposed allocation make the problem clear. The existing tower location is 2.8 miles south of the Wickenburg Municipal Airport and, thus, within the three mile Airport Traffic Area ("ATA"). The proposed site lies directly in the route of flight for aircraft flying north to Wickenburg from southern Arizona, using the Buckeye VOR Navigational Radio. At the current height of 499 ft. just below the recommended pattern altitude (500 ft.) for aircraft entering the Wickenburg Airport pattern, the tower is already considered a hazard by many local pilots due to difficulty in seeing it during daylight hours.

Clearly, raising the height of any tower in the vicinity of the airport in any direction should not be seriously considered. The Wickenburg Airport Advisory Commission, on Tuesday, May 11, 1993, reiterated its concern about the tower proposal and voted to disapprove Petitioner's request. In addition, the Arizona Pilots Association and the Arizona Department of Transportation each previously objected to construction even to the existing 499 ft. tower raising safety and air navigation hazard objections. These objections would be even more serious with a 841 ft. tower. Similarly, the proposed site (and existing site) are both within two miles of the Luke Air Force Base Alert Area A-231, Concentrated Student Jet Transition Training Area. Any such tower construction would appear to require comment by the Air Force as well.^{2/}

c. The Commission should be aware that on May 17, 1993, the Mayor and City Council of Wickenburg, Arizona, conducted hearings on this matter and unanimously expressed their concern with and objections to the proposed 841 ft. tower. The strongest concerns were voiced with respect to both environmental and airport safety considerations.

d. The Group has been advised that the current 6 kw power operation of Station KFMA(FM) produces interference on television channels 8 and 10. The problem apparently

^{2/} Similarly, we note that the Wickenburg Airport has no control towers or sophisticated landing electronics so that all incoming air traffic home in on Vulture Peak. This makes the existence of two towers, one on each side of Vulture Peak, particularly dangerous.

results from second harmonics in the booster, the existing station being in a "superfringe" area. Increasing KFMA(FM)'s power to 25 kw might exacerbate this problem significantly.

e. The Vulture Peak Group has been advised that the conditions under which Petitioner was granted its permit by Maricopa County, in fact, may not have been met. Maricopa County granted the permit subject to an archeology study by a qualified archeologist and a report summarizing the findings of the study to the State Historic Preservation Officer. Construction was conditioned on receipt (prior to the issuance of zoning clearance) of written confirmation from the State Historic Preservation Officer that the report had been received. We are unaware that any such study was ever made. We made inquiry with the State Historic Preservation Officer on this point but, as yet, have not been able to obtain verification. This matter should be explored by the Commission before any further action is taken.

f. Perhaps most important, although proposing an allocation which will require construction of a huge tower 11.6 miles from Wickenburg, the petition does not in any way address the question of what will happen to the existing 499 ft. tower. The Vulture Peak Group believes it would be irresponsible for the Commission to allow an applicant to place two environmentally degrading structures in the same area, one on each side of Vulture Peak. At the very least,

grant of the allocation of 231C3 must be conditioned upon the Petitioner's agreement to take down its existing 499 ft. tower.

It should be stressed that neither the Vulture Peak Group (nor, we believe, the City of Wickenburg) is opposed to improved radio broadcast coverage, or is opposed to a power increase, per se. Nor are we opposed to a new site outside an 11.6 mile radius of Wickenburg. Indeed, it is possible even that the proposed site would itself be acceptable, so long as safety and environmental concerns are met, and most important, so long as the new allocation is conditioned upon completely removing the existing 499 ft. tower from its present site.

CONCLUSION

In sum, the Vulture Peak Group respectfully requests that the Commission reject the proposed substitution of Channel 229A with Channel 231C3 unless:


- a. The reallocation is conditioned upon the removal of the present KTIM(AM) tower at its present site;
- b. Any other proposed location should be located outside an 11.6 mile radius of Wickenburg;
- c. The applicant must be required to demonstrate that the proposal would not be a hazard to air navigation; and

d. Petitioner must submit a full Environmental Assessment in accordance with the Commission's rules covering any tower which it intends to construct.

Respectfully submitted,

VULTURE PEAK RESTORATION GROUP

By:


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Coordinator

OF COUNSEL:

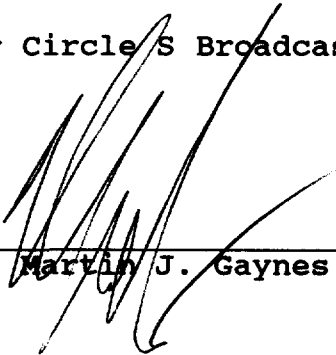
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May 21, 1993

CERTIFICATE OF NEED

I, Martin J. Gaynes, hereby certify that a copy of the foregoing "Comments" were served this 21st day of May, 1993, by first-class, postage prepaid, mail to:

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